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Study on the need to recognize and respect the rights of Mother Earth

Summary

The present document contains the study prepared by special rapporteurs pursuant to the request of the Permanent Forum on Indigenous Issues at its eighth session that a study be prepared on the implementation of General Assembly resolution 63/278, taking into account, inter alia, the consideration and recognition of Mother Earth rights (see E/2009/43, para. 76).

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I. Harmony with Mother Earth and the possibility of a declaration*

1. In 2009, the United Nations General Assembly, at its sixty-fourth session considered, among other issues, the environment, sustainable development, biodiversity, climate change, desertification, water as a basic resource and a draft resolution entitled "Harmony with Nature". The United Nations Department of Public Information mentioned the draft resolution in a press release, underscoring its novelty.[1] While the press release referred to a resolution on harmony with Mother Earth, it is in fact entitled "Harmony with Nature", which is the same document that was subsequently amended to accommodate the concerns of sponsors.[2]

2. The Plurinational State of Bolivia submitted the draft resolution on harmony with nature. The term "Mother Nature" is important to the Bolivian proposal because it conveys the Andean concept of *Pachamama*, the symbiosis between humankind and nature, thereby giving nature its due respect. The original wording gave a certain slant to the United Nations approach, which, in any case, has been reflected in the final version adopted. The changes are editorial rather than substantive. The error of the Department of Public Information is rather understandable and can be accommodated, even though there is a slight difference. The draft resolution on harmony with Mother Earth proposes "a possible declaration of ethical principles and values for living in harmony with Mother Earth", while the one on harmony with nature makes no such reference, nor does it rule it out.

3. Also at the initiative of Bolivia, the General Assembly had, on 22 April 2009, designated that date as International Mother Earth Day. However, that designation was not fully endorsed. The draft resolution on harmony with nature was adopted on 21 December. In it, the Assembly recalls earlier statements and actions of the United Nations related to the protection of nature since the adoption of the World Charter for Nature; expresses its "concern at the documented environmental degradation and the widespread challenges resulting from human activity" and its conviction that "humanity can and should live in harmony with nature"; and, to that end, "invites Member States, the relevant organizations of the United Nations system, and international, regional and subregional organizations to consider, as appropriate, the issue of promoting life in harmony with nature" and to make use of International Mother Earth Day, as appropriate.

4. The indigenous peoples are conspicuously missing from the list of those so invited. Nor are they mentioned in the draft resolution on harmony with Mother Earth, which does not mean either that they are being excluded. To exclude them would be unthinkable in light of the United Nations Declaration on the Rights of Indigenous Peoples. Moreover, on an issue that is so vitally important to them, no resolution should be adopted subsequently without their direct contribution, or through national mechanisms responsible for indigenous issues. That is the approach that should be taken if the proposal for a "possible declaration of ethical principles

* The present document contains the study prepared by Carlos Mamani and Bartolome Clavero.

[1] Available from: http://www.un.org/News/Press/docs/2009/ga10907.doc.htm.

[2] See list of draft proposals of the Second Committee as at 11 December 2009, available from: www.un.org/ga/second/64/proposals.shtml; see also A/C.2/64/L.24/Rev.1, A/C.2/64/L.24.

and values for living in harmony with Mother Earth" is to be heeded. This study makes a case for taking such an approach.

II. Environment and sustainable development: the Brundtland paradigm

5. The United Nations began focusing on nature in an ongoing and institutional manner in 1972, when the United Nations Environment Programme (UNEP)[3] was established and entrusted with a mission "to provide leadership and encourage partnership in caring for the environment by inspiring, informing and enabling nations and peoples to improve their quality of life without compromising that of future generations". The purpose is clear. Thus, the United Nations became increasingly aware that purely economic development which was booming at that time was so destructive as to potentially jeopardize the survival of humankind. Since then, corrective policies have been promoted to reverse the environmental degradation and the destruction of nature in pursuit of development that is inimical to mankind. However, such policies failed to fully address the problem. If only for the sake of efficiency, this is where the indigenous peoples do and should come in. Concerns related to justice, as expressed by the Declaration on the Rights of Indigenous Peoples, will be addressed later.

6. In 1972, following the adoption of the Action Plan of the United Nations Conference on the Human Environment, problems began to be identified and policies formulated without taking into account the existing reservations in indigenous territories or the very existence of the indigenous peoples themselves.[4] The indigenous peoples were not mentioned in the World Charter for Nature, adopted by the General Assembly on 28 October 1982, which purported to lay down the basic requirements for the protection of nature.[5] In that Charter, the United Nations states that it is "aware that mankind is part of nature", "convinced that every form of life is unique, warranting respect regardless of its worth to man", and "persuaded that lasting benefits from nature depend upon the maintenance of essential ecological processes and life support systems, and upon the diversity of life forms". With such goals in mind, the Charter sets forth objectives and duties free of control or monitoring mechanisms, "taking fully into account the sovereignty of States over their natural resources". Under such circumstances, it was not surprising that indigenous people were not readily involved in the protection of nature.

7. In 1987 the international paradigm on nature was appropriately defined on the basis of the report of the World Commission on Environment and Development, entitled "Our Common Future" (also called the Brundtland Report in honour of Gro Harlem Brundtland, the Chairman of the Commission).[6] It is the report that

[3] See United Nations Environment Programme; available from http://www.unep.org; www.unep.org/iyb.

[4] See Report of the United Nations Conference on the Human Environment, available from: http://www.un-documents.net/aphe-b5.htm.

[5] See http://www.pnuma.org/docamb/cn1982.php of the UNEP Regional Office for Latin America and the Caribbean.

[6] Report of the World Commission on Environment and Development: Our Common Future, available from: http://www.un-documents.net/wced-ocf.htm.

proposes and develops the concept of sustainable development in a protected environment, including an analysis of the dominant economic, political and social systems, while excluding cultural aspects or other economic, political and social systems of lower standing in the current world. "Recognizing rights and responsibilities" is the title of a section of the report. There is no mention of the rights or responsibilities of indigenous peoples in the report.[7]

8. The key term in the Brundtland paradigm is sustainable development, with the stress on the noun *development*. The adjective *sustainable* is of course an important qualification, but a qualification nonetheless. According to the report, the prominent responsibilities belong with States, as do the corresponding powers. Those responsibilities are also shouldered in part by international and non-governmental organizations, but not by indigenous peoples, who are not taken into consideration in any way.

III. Biodiversity and climate change: between restriction and exclusion

9. A significant development took place at the 1992 United Nations Conference on Environment and Development or Earth Summit. The Summit constituted an important step forward in that it brought States closer to making serious commitments through multilateral treaties, beginning with the Convention on Biological Diversity.[8] It was also the moment in which international environmental and biodiversity policy first took note of the indigenous presence. The preamble refers to indigenous peoples, recognizing their valuable role in the conservation of biological resources. Indigenous peoples are also taken into consideration for practical purposes (article 8 (j)). However, they are not referred to as peoples with rights and responsibilities in their own capacity and in their own right. Instead, they are referred to as "indigenous communities" dependent on States. By implication, this includes cases where the State does not control the indigenous territory, which is usually the most biologically diverse. At the same time, in order to manage biodiversity, States have an obligation to ensure the "approval and involvement" of indigenous communities and to share the benefits with them. By the same token, it is implied that communities have an obligation to share their knowledge of biodiversity with the State.

10. The Convention restricts the role of indigenous communities to the most narrowly local, in situ context. At every other level, the indigenous presence in the Convention evaporates completely. The Convention provides for the holding of meetings of the Conference of the Parties at regular intervals. The indigenous peoples, who do not so much as appear in their own capacity, are not parties to the Convention. The parties are the ratifying States, and it is States that hold summits. Yet in practice, as a result of their own initiative and pressure, indigenous peoples do make their presence felt — not in their own right at summits, but rather by contributing advice or making proposals at pre- or intersessional meetings, or

[7] Available from: http://www.un-documents.net/ocf-12.htm#II.5.1 (paras. 81-84).

[8] See http://www.cbd.int/convention/convention.shtml for the official website of the Convention and its development.

through incorporation and co-option into State delegations.[9] Strictly speaking, summits on biological diversity take place between States, without the participation of peoples as such.

11. The Earth Summit held in 1992 in Rio de Janeiro adopted Agenda 21, the Programme of Action for Sustainable Development. The figure 21 refers to the twenty-first century. Chapter 26 of the Agenda is entitled "Recognizing and strengthening the role of indigenous people and their communities".[10] Without referring to peoples as such, the chapter comes close to a rights-based approach by making an explicit connection with the parallel development of international law on indigenous peoples. It states that some of its provisions are "already contained in such international legal instruments as the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention (No. 169) and are being incorporated into the draft universal declaration on indigenous rights, being prepared by the United Nations working group on indigenous populations".

12. The draft in question would ultimately become the 2007 Declaration on the Rights of Indigenous Peoples. It is not certain that the 1992 draft was a response to the approach of ILO Convention No. 169, as stated in the Agenda. The right of indigenous peoples to self-determination had already been incorporated as the foundation of the other rights relevant to the Agenda, such as the right of indigenous peoples to land, to resources for traditional use and to their own customary systems for the management of those resources. That question will be considered below. What needs to be stressed here is that, as far as the indigenous presence is concerned, there is no substantial difference in focus between the Convention on Biological Diversity and Agenda 21, although the latter takes on particular significance in that it emphasizes the potential contribution of indigenous peoples beyond the local level. In substance, chapter 26 of Agenda 21 applies the Brundtland paradigm to indigenous issues. It effectively posits as a category the sustainable autonomous development of indigenous communities. The stress remains on the goal of development, whose conceptualization and implementation do not require indigenous self-determination. The adjective is added, but indigenous communities do not in effect gain any self-determination.

13. By and large, throughout the Rio process, the Brundtland paradigm continues to undergird institutional development and substantive international policies on biodiversity for development. General Assembly resolution 64/196 on harmony with nature provides that a sub-item with a similar title should be included in the provisional agenda of the General Assembly under the item entitled "Sustainable development". The same can be said of climate change, another recent area of concern and action for the United Nations. The United Nations Framework Convention on Climate Change (UNFCCC) was also concluded in 1992, and was supplemented in 1997 by the Kyoto Protocol for the reduction of carbon emissions, the primary cause of climate change. The Conference of the Parties held pursuant to

[9] Http://www.cbd.int/convention/cops.shtml: Decisions adopted by the Conference of the Parties to the Convention on Biological Diversity at its Fourth Meeting, Decision IV/9: Implementation of article 8 (j) and related provisions.

[10] Http://www.un.org/esa/dsd/agenda21, on the website of the United Nations Department of Economic and Social Affairs, Division for Sustainable Development.

the Framework Convention can also be genuine world summits. More specifically, they are of course conferences or in their case, summits to address climate change.[11]

14. However, there is one important respect in which United Nations biodiversity policies differ from climate change policy in their planning and delivery. Neither the Framework Convention nor the Kyoto Protocol refers to the possibility of an indigenous contribution, or indeed to the indigenous presence. The Framework Convention strongly reaffirms the principle of the responsibility, and consequently the power, of States. It does so in terms of apparent exclusivity which can cause confusion, especially in view of the overlap with United Nations agencies and programmes: "Reaffirming the principle of sovereignty of States in international cooperation to address climate change".[12] Such principles again exclude indigenous peoples. The sharp contrast between the Convention on Biological Diversity and the Convention on Climate Change is a telling sign of the uneven situation that currently prevails with regard to the operative recognition of the indigenous presence. There is a contradiction both in principle and in practice.

15. Indigenous organizations now have experience of international action gained through their participation in various United Nations forums since the 1980s. They are fighting to make their presence felt at forums where decisions on issues that affect them are taken. Such forums include conferences on climate change, to which they have yet to gain even a minimally formal degree of access; they do not even have access to the fairly limited summits on biological diversity.[13] Worse still, it is well-known that indigenous peoples suffer not only from externally induced climate change but also from some of the international policies aimed at reversing it that were adopted without their involvement. The above notwithstanding, prospects have improved since 13 September 2007, as a result of the United Nations Declaration on the Rights of Indigenous Peoples.

IV. International law: the rights of indigenous peoples and of Mother Earth

16. The burning issues of the environment, sustainable development, biodiversity and climate change, involve a wide range of rights enshrined in the United Nations Declaration on the Rights of Indigenous Peoples, including their basic right to self-determination. Strictly speaking, the whole Declaration is important,[14] in view of all the changes in policy and practice that all United Nations bodies, Member States and, of course, last but not least, indigenous peoples themselves, have to make in order to implement it. In the light of the right to political, economic, social or

[11] Http://www.un.org/spanish/climatechange/newsarchive/year2009/group4.shtml: Gateway to the United Nations system's work on climate change.

[12] See http://unfccc.int/resource/docs/convkp/conveng.pdf on the website of the United Nations Framework Convention on Climate Change, and http://unfccc.int/resource/docs/convkp/kpeng.pdf for the text of the Kyoto Protocol.

[13] http://derechosmadretierra.org/2009/12/14/cumbre-de-copenhague-foro-de-pueblos-indigenas-presenta-propuesta-en-cop15/#more-535 (in Spanish): Copenhagen Summit. Indigenous Peoples Forum presents proposal at COP 15, website of Mother Earth. Harmony with Nature.

[14] http://www.un.org/esa/socdev/unpfii/index.html, link on the portal.

cultural self-determination, above all what is needed is the participation and consent of the peoples.[15]

17. The Declaration guarantees the right of indigenous peoples to their own material and other resources, to use them in accordance with their aspirations and needs, in accordance with their *sustainable development* priorities and strategies based on their own culture. Earth, biodiversity and climate change conferences or summits should have changed their procedures by now to allow proper access to representatives of indigenous peoples, thereby affording them an international forum not only to defend their rights and interests but also to contribute to the well-being and prosperity of humanity with their own proposals, such as the Andean concepts of the rights of Mother Earth, *Pachamama*, or of living well, *Suma Qamaña* or *Sumak Kawsay*[16] which will be discussed below.

18. The indigenous peoples who hold the view that nature is Mother Earth, endowed with rights, are committed to promoting that world view in all aspects of their internal administration. They also have the right to promote it at relevant national and international forums in order to promote it as a form of relationship between mankind and nature. It is worth emphasizing this because there are still prejudices that are preventing the exercise of such indigenous rights, within individual countries and in the world at large. The most widespread prejudice views the concept of nature as Mother Earth endowed with her own rights as a religious creed the promotion of which would impinge upon freedoms such as the freedom of conscience. Even if that were the case, indigenous peoples have the right to uphold it as a cultural value, along with the right to promote it, if the goal is to give it a status of general domestic or international law.

V. Indigenous peoples and Mother Earth: the Andean belief

19. We are going to focus on the Andean concept of Mother Earth by delving into colonial records. The Earth is sacred. The relationship of the *ayllu*, the political community, with the Earth, is intimate belonging. The Earth gives life, nourishes, comforts in her lap. In Aymara she is *Llumpaqa Mama*, although the Quechua word *Pachamama* is the most widespread. *Pachamama* is the most widespread name for Mother Earth, normally used in Quechua, Aymara and even in Spanish. Anello de Oliva recorded the term in its fundamental sense: "They also worshipped the fertile earth, which they call Pachamama: which means fertile and fruitful Mother Earth."[17]

20. Fertile Mother is a name that conceives of the Earth as a source of life, like the field, the garden people tend for their food, nature of abundant water and air. In this regard the concept of nourishment is fundamental: people, like the other beings that

[15] http://www.un.org/esa/socdev/unpfii/documents/E_C_19_2009_14_en.pdf, annex: *article 42 of the United Nations Declaration on the Rights of Indigenous Peoples*.

[16] *Constitution of the Republic of Ecuador*, Title II, chaps. II and VII, and Title VII. *Constitution of the Plurinational State of Bolivia*, Article 8.I: "The State shall adopt and promote, as ethical and moral principles of a pluralistic society, the motto '*ama qhilla, ama llulla, ama suwa* (do not be lazy, do not lie, do not steal), *suma qamaña* (living well), *ñandereko* (the harmonious life), *teko kavi* (the good life), *ivi maraei* (land without evil) and *qhapaj ñan* (noble path or life)'".

[17] Giovanni Anello de Oliva, *Historia del Reino y Provincias del Perú* (Lima, Catholic University of Peru, 1998) p. 165. References below: p. 151.

populate the Earth, together are members of a community of life. Fertile reflects the unique ability to accommodate a community of life, a community nurturing life on a continuing basis. In Aymara rearing is *uywa*, Mother Earth is *uywiri*, the one who rears.

21. Polo de Ondegardo wrote of the indigenous peoples' worship of the sun, the stars, thunder and the Earth, which they called *Pachamama*. The Spanish colonizers viewed this concept of Mother Earth of the ancient inhabitants of Peru as nothing more than idolatry, an indigenous error that had to be corrected through evangelization, another form of colonization. Polo's own comments on that idolatry give us an idea of the respect and esteem that the Andeans had:[18]

> The coastal Indians worship the sea so it will give them fish or calm waters, casting white maize flour or red ochre, or other things, into it. The Indians of the Sierra, just as they worship the lakes, worship the sea even though they have not seen it, and they call it *Mamacocha*, while the Aymara call it *Mama Cota*; the highlanders who come down to the plains to trade worship the sea and the plains with different ceremonies. And the snowy mountains are also revered and worshipped by the Indians.

22. Mother Earth is a greater concept that encompasses others such as *Mamacocha* or *Qhuya* (queen or wife of the Inca) which is the name given to mines. *Qhuya* is the insides of the Earth. Polo de Ondegardo wrote:

> The same is true in the mines which they call Coya, which they worship, and they worship the metals which they call Mama, and the ores which they call Corpa; they worship them, kissing them, and organizing various ceremonies for them.

23. Sacred worship forestalled any destruction or misuse. Mother Earth is, after all, an all-encompassing concept. In recognition and to worship her Sanctuaries (*wak'as*), meeting places and places of learning were built, along the *ceques* or paths that linked the rest of the country with the heart of Cuzco, *Quri Kancha*, the golden courtyard.

> They had two kinds of temple, natural and man-made. Natural temples included skies, elements, sea, earth, mountains, cliffs, great rivers, springs, lakes or deep lagoons, caves, steep outcrops, mountain tops ... all were revered by them.[19]

24. Man's journey through life is dotted with natural sanctuaries. To journey through life is to obey the law and the community's rules. The path is opened paving the way for future generations, in preparation for living well, *Suma Qamaña* or *Sumak Kawsay*. The authorities must strive to care for it by devising patterns of conduct through compliance with the law. Having discharged their duty, the *Kuraka* (*mallku* in Aymara), became *k'acha runa*, beautiful people, emulated by the whole community, especially the youth.[20] Compliance with the norms is judged by the

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[18] Polo de Ondegardo, *Informaciones acerca de la Religión y Gobierno de los Incas* (Lima, Imprenta y Librería Sanmarti y Cía) p. 3. References below: p. 191.

[19] Attributed to Blas Valera, *Relación de las costumbres antiguas de los naturales del Perú*, in *Tres Relaciones de Antigüedades Peruanas* (Madrid, Ministry of Development of Spain, 1879), p. 146.

[20] Roger Rasnake, *Autoridad y poder en Los Andes. Los Kuraqkuna de Yura* (La Paz, Hisbol, 1989); Tom Zuidema, *Reyes y Guerreros. Ensayos de cultura andina* (Lima, Fomciencias, 1989),

community, in terms of its ability in allocating resources and how it supports the family and community economy, which is also a result of a balanced relationship with nature. Within this conceptual framework, which conceives of the rights as a journey to be experienced, we will now analyse the concept of Mother Earth and her rights.

25. Blas Valera was familiar with Andean tradition and appreciated the people's profound respect for the Earth and its elements, understanding that they viewed them as temples. All the historical accounts regarding these places tell the same story. Tata Sajama (doctor Sajama), Mama Tungurahua and Qhapia (Copacabana), on the shores of Titicaca, are just some of the places that were considered sacred and seen as centres of energy, power and knowledge. People with that knowledge could communicate with the mountain summits, or *apachetas*. Magnificent buildings were also built in many places as shrines; the ruins of Pachacamac on the Pacific coast are one such example.

26. The indigenous peoples' culture of respect and reverence for the Earth was intolerable to the foreign colonizers, who made every effort to eradicate whatever they considered to be idolatrous. José de Acosta considered that "the sinfulness and perdition involved in all this was exaggerated to the point of folly", referring to how the indigenous peoples could worship rivers, fountains, ravines, rocks or large stones and mountains.[21]

27. They could not understand that the indigenous peoples had a different view of the world from the Christian one, a view centred on the omnipresence of terrestrial divine beings. Nonetheless, the ancient chroniclers developed an interesting awareness of this indigenous culture. For example, Blas Valera explained that the ancient *pirwanos* (the indigenous peoples of *Tawantinsuyu*) did not consider their sacred places to be deities, but rather viewed them as holy because of their significance. The natural shrines did not need identification. They simply contained an *usnu*, a cavity in the ground for the storage of sacred items and for communication with the Earth.

28. Fernando de Santillán likewise understood that the sun, moon and earth were deities for "the Indians": "They also worshipped the Earth, which they said was their mother". José de Acosta says the same thing: "They also worshipped Earth, which they called Pachamama". Similarly they venerated the sea, known as *Mamacocha*. Being a learned man, the priest found their practices to be the same as those of the ancient Europeans, who worshipped the goddess *Tellus*. All the European chroniclers took it for granted that the indigenous peoples had a special relationship with the Earth. Most of them described the resulting practices as idolatrous and took upon themselves the task of eradicating them. Ludovico Bertonio wrote:

> Pachamama, Suyrumama: the earth that brings forth bread; among the ancient peoples, it was a reverential name, since they saw that the earth gave them

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Nathan Wachtel, *El regreso de los antepasados. Los indios uru de Bolivia, del siglo XX al XVI* (Mexico City, Fondo de Cultura Economica, 2001).

[21] See José de Acosta, *Natural and Moral History of the Indies*. Edited by Jane E. Mangan, translated by Frances M. López-Morillas (Durham and London, Duke University Press, 2002), p. 261-262. Subsequent references: p. 258.

> food, and so they said "Pachamama huahuamaha. Oh earth, I will be your son".[22]

29. *Suyrumama*, like *Qhuya* (mines), is a name for the bowels of the earth. *Qhuya* is also identified with woman: "They held the earth to be the special advocate of women who were in labour, and made sacrifices to her when a woman was about to give birth".[23] Watering the Earth makes it particularly fertile and productive. Hence the translation "earth that brings forth bread". The invocation *Pachamama huahuamaha* "Pachamama, I will be your son", refers principally to *Suyrumama*. However, when they said the name *Pachamama*, they were also invoking the universe. *Suyrumama*, or *chacra* (smallholding or garden), an expression of fertile and fruitful Mother Earth, was a sacred place; its sacredness was signalled by erecting a large stone, or *pukara* (fortress), as a marker (*chimpu*). Polo de Ondegardo said in this respect:

> In some places they usually placed a long stone in the middle of the *chacras* to invoke the virtue of the earth and provide protection.

30. The "long stone" is called a *pucara* or *tacagua*. Even today, a small tower is erected in the *chacra*, particularly when it is communal. *Suyrumama*, or *chacra*, demonstrates the tremendous significance given to life, symbolized by crop-bearing. The harvest was a festival, as described by so many chroniclers. The members of the *ayllu* took part, wearing their best attire, singing and dancing. The best of the crop was identified and set aside in order to celebrate the seeds, which were considered to be *illa* (a symbol). *Zara Mama* (Mother Corn) was dressed as a woman, with her traditional *anacos*, *lliclla* and *topos* (poncho, woollen shawl and pins). Sacred corn festivals were held at the end of the harvest,[24] when the corn was ripening and at the start of seed time. The festival took place in the *colca*, the granary where the crops owned by families, the *ayllu* and the State were kept. After the imposition of Christianity, the celebration was merged with Corpus Christi. Such festivals still take place in the Andes. It was so important to amass food, clothing and other items used by society that, according to Blas Valera, the name given by the Spaniards to *Tawantinsuyu*, i.e. "Peru", was in fact *pirwa*, another name for the silos in which the harvest is stored in the southern Andes.

> To this god, they entrusted their granaries, their treasures and their warehouses, as well as the most distinctive cobs of corn or first fruits, and the storerooms that they had inside their homes for their treasures, clothing, dishes and weapons were called *pirua*.

31. It is interesting to see the linkage of concepts and the systemic unity that this consideration of nature and the cosmos gradually reveals. A passage from Anello de Oliva introduces us to the broader meaning of *Pachaqama*, which, like Mother Earth, has been given different names throughout history:

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[22] See Ludovico Bertonio (1612), *Vocabulario de la lengua Aymara* (La Paz, Musef, 1984), p. 242. Subsequent references: pp. 208 and 242.

[23] See Fernando de Santillan, *Relacion del origen, descendencia, politica y gobierno de los Incas*. In *Tres Relaciones de Antigüedades Peruanas* (Madrid, Ministry of Development, 1879), p. 31. Subsequent references: pp. 30-35.

[24] See *Denuncia que hace don Juan Tocas principal y fiscal mayor de la doctrina de San Pedro de Tiellos contra Alonso Ricari principal y camachico del Pueblos de Otuco anexo de la doctrina de San Pedro de Huacas*, in *Procesos y visitas de idolatrias. Cajatambo Siglo XVII*, Pierre Duviols (Lima, PUCE, 2003).

> The Indians on the coast had the sea as their god, and made sacrifices to it; just as those in the mountains worshipped the Sun. All these superstitions and rites were started on the devil's orders, so that they would cease to worship Pachacamac, and indeed they turned away from him to such an extent that they abandoned his great and magnificent temple, having forsaken him for many years.

32. Religious prejudices aside, this tells us that *Pachaçama* is the spirit of the universe, *pachaqamaq*, since *qamaq* means breath, or creative fire. Consequently, the ancient chroniclers presented him as a deity. The temple of Pachaqama, now Pachacamac on the Pacific coast, had great significance as the dwelling place of the universe. The account written by Fernando de Santillán states that:

> ... the Inca ordered [a house] to be built in his presence, and it is a building that is standing today, of great height and splendour, which they call the great *huaca* of Pachacama, on a large mound of earth that looks almost completely man-made, and above it the building; there the huaca said to the Inca that his name was Pachahac camac, which is to say, "He who gives being to the earth".

33. There is no question that esteem for Mother Earth goes well beyond the concept of the fertile and productive *Suyrumama*. It dates back to the very beginnings of indigenous groups themselves. Hence of the importance attributed to certain sacred sites known as places of origin (*pyajariñas*), Tambo Toco being the most famous. These places attest to the special relationship between the indigenous peoples and the Earth in that it goes to their origins, the bowels of the Earth: the *chinkanas* (tunnels) and the *qhuya* (mines).

34. The significance of Mother Earth is reflected in the value placed on invoking it, since there was nothing more sacred. The Earth was invoked to seal transactions, especially political interactions. Parties to pacts and other acts sealed by swearing oaths to the Earth by kissing it, or even grabbing a fistful of dirt, when they were not face to face.[25]

35. In the Altiplano Sur, in the *pakajaqi*, Pacajes Province today, Mother Earth is *Llumpaqa Mama*. The word *llumpaqa* has become obsolete and has been retained only for ceremonial purposes. Bertonio assists us once again with seventeenth century references:

> *Llumpaka. Koma*: clean, smooth, polished;
>
> *Llumpacahatha, Komachatha*: to clean, to polish, to make shine;
>
> *Llumpacaqui Sarnacatha*: to live chastely, or without causing trouble as a righteous man.

36. *Llumpaqa* concerns the relationship that exists between the Earth and cleanliness, in other words, hygiene and well-being. Clearly the concept of *Llumpaqa* is what Mother Earth should be. What stands in contrast to this concept is that which breaches the norms, contravenes the law, and interferes with the journey of the individual, family and society as a whole.

[25] See *Causa hecha a los curacas camachicos y mandones del pueblo de San Francisco de Otuco en el siglo XVII*, in *Procesos y visitas de idolatrías. Cajatambo Siglo XVII*, Pierre Duviols, (Lima, PUCP, 2003).

37. The concept of Qamiri entails compliance with the law, and, for the benefit of the non-indigenous public, has been translated as *suma qamaña*, living well. The *Qamiri* is the world wise traveller who knows what it means to live life to the fullest. The opposite is:

> *Pacha ccuya haque*: wretched man with no sense of compass.

38. In contemporary Aymara language Ccuya is rendered as *q'uya*, meaning wretched individual. However, with the prefix *Pacha*, an individual is said to be wretched in terms of the Earth, the world and time. It is a philosophical concept of poverty, meaning, in other words, "he who is uneducated in the ways of life", according to Bertonio, who also informs us that: *Pachaccuya maynina ysuhuaaña sarnaqata*: means to live forsaken by all, humiliated.

39. That is how society views the one who has run afoul of society and as a result has been cast adrift. Bertonio further enlightens us in his dictionary on *qulla* thinking as follows:

> *Pacha*: everything or everyone;
>
> *Marcapacha*: the community as a whole;
>
> *Taqquepacha haq*: all men or persons.

40. All members of society (*markapacha*), all persons (*taqijaqipacha*), those who comply with the law. The one who has offended is a poor wretched soul who feels humiliated in the presence of *qamiri*, those who are educated in the ways of life. Transgression angers Mother Earth. Fernando de Santillán once again enlightens us:

> It was said that the Earth became angry where evil occurred, and chicha was spilled and clothes were burned to placate it.

41. *Pachamama*, Earth, fertile and productive Mother, has its laws, its rights. It is through compliance that one becomes a *qamiri*, one who is educated in the ways of life. *Qamiri* is derived from the verb *qama*, which also means "home". *Qamiri* as a quality may apply to both the individual and the collective, resulting from compliance, which accounts for a full life in harmony with nature, the various facets of Mother Earth.

42. The *Qamiri* possesses an adequacy of resources and spirituality. He is familiar with the "rotation of the sun and the stars";[26] he speaks with mountains. All of this is grounded in deep knowledge that he applies. Observation of the sun and the stars merges with study of nature and the behaviour of animals, permitting the forecast of phenomena such as drought, frosts and the rainy seasons. Ultimately, the *qamiri* is a person worthy of respect, *alli yachachic macho vava*, one who knows everything about life, who spends his last few days teaching young people. It was believed that the *vava* embodied the mountains. Fernando de Santillán tells us about that:

> It was commonly believed and assumed that when a good person died, he returned from whence he came, which was under the Earth, where men lived in full repose.

[26] See Felipe Guaman Poma de Ayala, *Nueva Coronica y Buen Gobierno* (1615); available from www.kb.dk/permalink/2006/poma/info/es/frontpage.htm.

43. The concept of Mother Earth was developed in the Andes as a framework for compiling and developing a universal vision shared by a diversity of cultures, particularly indigenous ones. The Mapuche people, whose original territory is in the southern areas of Argentina and Chile, consider themselves as "people of the Earth" (*mapu-che*); and their language, *Mapudungun*, means "language of the Earth". *Mapu* means Earth, while *che* means people.[27] In this context, Earth is *Nuke Mapu*, meaning Mother Earth, which in political thought becomes *Wall Mapu*, which means territory. The Mapuche people as a whole see themselves as sons and daughters of the Earth. Their efforts are aimed at recovering land confiscated by Chile. They believe that people, land and nature constitute a single entity, which is why they see themselves as buds of the Earth: "the Mapuche word has a much deeper meaning than that of people of the Earth: it means bud of the Earth, people who emerge from the Earth, live, travel on it, protect it and, when they die, return to the Earth".[28] In this regard, the concept of *Admapu* is important: it includes a set of rules, observed and taught by the members of the community (*lof*), that regulate all life cycles of the Mapuche people, which, when broken, create conflict. Responsibility for transgression is individual as well as communal.

44. In Guarani thinking, walking the Earth without evil (*Yaguata ivi maráevae koti*) is the mark of cultural existence and continuity, and compliance with the law is an important element. Failure to do so causes ecological, social and economic imbalance in the community. If the imbalance is significant, the community may disappear and need to be reconstituted. To walk the Earth one must not commit evil deeds (*ñomboete, yoparareko, mboyopoepi*), which has sustained the Guarani identity. The connection stems from the principle *Ñande Reko*, which may be translated as "our way of being, different from others, the Spaniards and their descendants". This Guarani way of being is called *tekoa*, which in ancient times was *teko katu*, "good, free life". *Teko* means "being, quality of life, custom, law, habit". In the concept of Earth without evil, *teko* also has to do with the character of the person walking.[29]

45. The path also has its spirit. Talking, making offerings of coca leaves or pouring libation are expressions of respect. Personal health, whether spiritual or physical, also depends on how healthy our relations are with Mother Earth, which provides us with all kinds of medicines. Doctors are duty bound to consult their patients in order to gather relevant information. All this is not religion but simply respect for nature, for nature's other beings. It is knowing how to share with them. Nature, of which mankind is a part, is *Pachamama*. The rights of *Pachamama* could be inherent in the rights of humankind, human rights.

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[27] See Juan Carlos Radovich et al. "La Etnicidad Mapuche en un contexto de relocalizacion: el caso de Pilquiniyeu del Limay", available from: http://siteresources.worldbank.org/intlacinspanish/Resources/5_2_conflictos_Radovich_ppt_es.pdf.

[28] See "Mediacion entre Machis: Experiencia para validar una propuesta de diseno en mediacion mapuche", p. 6, available from: http://www.cejamericas.org/doc/documentos/4_med_polsocial_4_pkrause_rparada.pdf; Centro de Mediacion, Temuco.

[29] See Bartomeu Melia, *Ñande reko, nuestro modo de ser y bibliografia general comentada* (La Paz, CIPCA 1988).

VI. The rights of Mother Earth in non-indigenous areas*

46. In recent years there has been a paradigm shift in rights. Numerous subjects who heretofore had no guaranteed rights now enjoy such rights. Similarly, inanimate beings have been endowed with rights because it was felt that they needed to be protected to the extent that they were of concern to human beings. There appears to be a conceptual change in the history of human rights.[30] Some outlooks are undergoing change in the face of evidence, including scientific evidence, with the idea that human beings have a symbiotic relationship with nature, gaining currency.

47. This is not something that has only just been realized. In 1949, with the advent of international human rights law, Aldo Leopold proposed a *Land Ethic*, arguing that the individual is part of a community and that this community is a *Whole*. His proposal sought to change human behaviour from that of conqueror of the land to a citizen of it, implying respect for the other beings that are part of that natural community.[31] In 1969, James Lovelock proposed the Gaia Hypothesis, which considered the Earth as a single organism in which all parts, including human beings, are almost as closely interrelated and as interdependent as the cells of the human body.[32] Similarly, the deep ecology movement, which has been promoted by Arne Naess since 1973, states that all human beings are constituent parts of one single natural system and are therefore interdependent with the other components. Thus, all natural things have the right to exist, regardless of their capacity for self-determination.[33] Deep ecology promotes a new integrating vision of the universe as a network of relations.[34] What is called spiritual ecology also proposes a closer relationship between nature and mankind.[35]

48. On the other hand, the idea that humans own nature might be considered a serious failure of non-indigenous thought and rights. There was a time when men thought that they could own women, an owner and chattel relationship that is obviously no longer the case. The same thing happened with the enslavement of human beings, on the basis of race with no distinction as to gender or age. The same idea of domination remains alive between men and natural beings. This position can be countered in cultures such as Hinduism.[36] We are undergoing an evolution in all human cultures, including non-indigenous ones, in light of evidence that we need a new relationship with nature.

49. The current system of environmental management has failed to prevent the deterioration or destruction of natural communities and ecosystems. Protection and

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* The authors of the present report are grateful to Gabriela Reyes for her assistance in preparing this section.

[30] Christopher D. Stone, *Should Trees Have Standing? Law, Morality and the Environment* (New York, Oxford University Press, 2010).

[31] http://132.248.62.51/sv/sv/2007/agosto/aldoleopold.pdf; Victor Manuel Casas Perez, *Aldo Leopold: La Etica de la Tierra*; Aldo Leopold Nature Center; http://www.naturenet.com/alnc/aldo.html.

[32] James Lovelock, *The Revenge of Gaia: Earth's Climate Crisis and the Fate of Humanity* (New York, Basic Books, 2006).

[33] *The Selected Works of Arne Naess* (New York, Springer, 2005).

[34] Fritjof Capra, *La trama de la vida: Una nueva perspectiva de los sistemas vivos* (Barcelona, Anagrama, 1998).

[35] Thomas Berry, *The Sacred Universe: Earth, Spirituality and Religion in the Twenty-First Century* (New York, Columbia University Press, 2009).

[36] Satish Kumar, *Spiritual Compass: The Three Qualities of Life* (Totnes, Green Books, 2007).

conservation efforts are failing because they focus on the adverse impact on the environment without addressing their causes. Natural communities and ecosystems are treated as private or public property. Mankind does not see itself as their guardian or beneficiary. Practically all non-human elements on Earth are legally considered as "natural resources" to be exploited by humankind or, more precisely, by corporations that emphasize maximizing profits for their shareholders and only engage in responsible social behaviour as regards nature and humankind as an afterthought.

50. Thus, such obvious effects of the deterioration of nature as climate change are considered and addressed not as evidence of a failed system but as phenomena that must be identified and dealt with separately. Environmental and natural degradation are symptoms of systemic problems that cannot be addressed successfully without fundamental institutional changes — and changes in the cultures which undergird such institutions. One has to lay blame at the feet of the cultures of States bent on unbridled development through the exploitation of nature, conceived as a mere repository of resources. Thus, this amply justifies recognizing or restituting rights to nature, through legislation arising not only from the State but also from popular culture.

51. A change of approach appears to be emerging in the field of law. For example, United States law has come to reflect a disposition to entertain administrative or judicial claims brought on behalf of natural beings or even access by them to justice through parent institutions,[37] which serves to counter the usual argument that entities with no inherent capacity for self-identification have no rights. Even the defence of the rights of inanimate things and animal species could be entrusted to institutions.[38]

52. A paradigm shift has been possible in the United Nations since the World Charter for Nature, in 1982. This is yet to be brought about. Since then, the United Nations has acknowledged that humankind is but one of the constituent species of nature and that its own existence is dependent on its symbiosis with nature, and that all life forms have intrinsic value and therefore deserve, "regardless of their worth to man", due respect from the human species. The recent resolution on harmony with nature rightly places the World Charter for Nature first among its preambular paragraphs. However, the utilitarian approach is still reflected in the resolution because of the "lasting benefits from nature", in the sole interest of mankind, no longer in symbiosis with nature. Thus, the aim in 1982 was to avoid excesses "through excessive exploitation ... by man" and not when consequently his behaviour is not in harmony with nature and the intrinsic value of its components and species.

53. A declaration on the rights of Mother Earth would highlight the consequences that were left unaddressed in 1982. The proposal has been made from an indigenous perspective, specifically the Andean one, but it has also been shown that the vision is not alien to the most sensitive non-indigenous sectors and that it is in tune with recent developments in both the international and national spheres.

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[37] http://supreme.justia.com/us/405/727/case.html, *Sierra Club v. Morton*, 1972, opinion of William O. Douglas; http://www.supremecourtus.gov/opinions/06pdf/05-1120.pdf: Massachusetts et al. v. Environmental Protection Agency et al.

[38] http://www.animallaw.info/cases/topiccases/catoesa.htm, site of the *Animal Legal and Historical Center* of the College of Law of Michigan State University, where other highly eloquent cases may be found.

Annex

Summary of a declaration on the rights of Mother Earth

Proposal by President Evo Morales Ayma of the Plurinational State of Bolivia, made to the General Assembly of the United Nations on 22 April 2009, the first International Mother Earth Day.

1. The right to life

This means the right to exist, the right of every ecosystem, animal or vegetable species, snow-capped mountain, river or lake not to be eliminated or exterminated by irresponsible behaviour on the part of human beings. We humans must acknowledge that Mother Earth and other living beings also have the right to exist and that our rights end where we begin to cause the extinction or destruction of nature.

2. The right to the regeneration of biocapacity

Mother Earth must be able to regenerate her biodiversity; neither human activity on planet Earth nor Earth's resources are infinite. Development cannot be open-ended, there is a limit and that limit is the ability of the animal, vegetable and forest species, of water sources, of the very atmosphere to regenerate. If we human beings consume and, even worse, waste more than Mother Earth is capable of replacing or recreating then we are slowly killing our home, little by little we are choking our planet, all living beings and ourselves.

3. The right to a clean life

Means the right of Mother Earth to a life free from pollution, because not only we humans have the right to live well, but also rivers, fish, animals, trees and the Earth itself have the right to live in a healthy environment, free from poison and pollution.

4. The right to harmony and balance with everyone and among everyone

Mother Earth has a right to be recognized as a part of a system in which all living creatures are interdependent. This implies the right to live in harmony with human beings. There are millions of living species on the planet, but only we human beings have the awareness and ability to take command of our own destiny in order to promote harmony with nature.